IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 441 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASH MOHANBHAI @ MANEKBHAI YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 441 of 2000

MR BC DAVE for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/01/2002

ORAL JUDGEMENT

This is a revision application under section 397 read with section 401 of Criminal Procedure Code, 1973 (for short, 'the Code').

2. The facts may be briefly stated as follows:

The present petitioner made a complaint to the learned Chief Judicial Magistrate, Surat. It seems his oral complaint was reduced into writing on 7.2.2000. However, before recording verification on oath, the petitioner submitted a second application Annexure 'B' saying that he had filed the aforesaid complaint on account of fear as indicated in Annexure 'B' and, therefore, he also declared that he wanted to withdraw the said complaint and accordingly the said complaint was withdrawn by him and order was passed indicating the said withdrawal below the complaint on 7.9.2000. On the same day, the petitioner submitted another application before the trial court saying that the said complaint was withdrawn by him under threat of the Police Officer. However, the learned Magistrate passed an order that once the withdrawal was permitted, it was not open for the learned Magistrate to proceed with the matter and, therefore, the said application was turned down. Feeling aggrieved by the said order, the present revision application has been filed by the petitioner.

3. Rule was issued. Mr B D Desai, learned Advocate appearing on behalf of the State. Respondent No. 2 has not appeared before the Court though duly cserved.

On going through the records and on hearing the learned Advocates for the parties present in the Court, it is found that the first complaint was an oral one and it was reduced into writing. It appears to have been reduced into writing by the Court itself. However, a second application was given after the withdrawal of it and a third application was given declaring that the withdrawal was under fear. This shows that there was some sort of waivering mind on the part of the present petitioner before the trial court. Any way, when the first complaint had not proceeded ahead and it was the feeling of the petitioner that the complaint was withdrawn under pressure, then the trial court ought to have considered that aspect of the case before dismissing the third application. This has not been done. In that view of the matter, I am of the opinion that the said order cannot be treated to be legal and cannot be upheld. In above view of the matter, this Revision Application is allowed. The orders passed by the trial court below application at page no.4 is set aside and the trial court is directed to proceed ahead with the complaint of the petitioner at page no.1 in accordance with law.

Rule is made absolute to that extent.

30.1.2002 [D P Buch, J.]
msp